IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/08/2002

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

W.P.No.4942 of 2000

T.Balasubramanian .. Petitioner

-Vs-

The Secretary to the Government
of Tamil Nadu,
Municipal Administration &
Water Supply Department,
Fort St. George, Chennai. .. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, as stated therein.

For petitioner : Mr.A.Rangarajan

For respondent : Mr.M.Mahalingam,
Govt. Advocate.

:O R D E R

Petition praying to issue a Writ of Mandamus directing the respondent to sanction pension to the petitioner by issuing revised orders from the date of absorption in the Neyveli Lignite Corporation Limited i.e. from 2.5.1966 instead of the date of superannuation i.e. from 1.8 .1984 with claim of arrears.

2. In the affidavit filed in support of the writ petition, the petitioner would submit that he was employed in Mannargudi Municipality and when he completed the period of probation prescribed, on 29.4.1947 , he was deputed to the Neyveli Lignite Corporation Limited (N.L.C.) from 24.2.1958; that he rendered service in the Municipality, Mannargudi, from 11.4.1945 to 24.2.1958; that in the N.L.C., he was absorbed with effects from 1.5.1966; that his lien in the Mannargudi Municipality was terminated consequent to his permanent absorption in the N.L.C. Limited; that he retired from the N.L.C. on 31.7.1984 in the post of Assistant Accounts Officer; and that at the time of his retirement, there was no pension Scheme, however, he was then governed by the Contributory Provident Fund Scheme.

3. The petitioner would further submit that 230 Government deputationists were permanently absorbed in the N.L.C. in the batches 1964, 1965 and 1966 prior to 8.11.1967 and the G.O. Ms.No.40, Finance (Pension) dated 20.1.1989 sanctioned proportionate Pension for the services rendered by the deputationists in the Government including the employees of the State Government Undertaking and local bodies who had been permanently absorbed in the N.L.C. prior to 8.11.1967 for the services rendered by them in their respective departments; that in G.O. Ms.No.1035 Finance (Pension) dated 08.11.1967, the Government have stated that the terminal benefits in respect of Government servants permanently absorbed in public sector undertaking were liberalized allowing proportionate pension and Death-cum-Retirement Gratuity based on the length of qualifying service under the Government till the date of absorption; that the Accountant-General, Madras, sought for some clarification from the Finance Department in his letter dated 10.3.1989, for which, the Finance Department, by its letter dated 25.3.1989, clarified that the orders shall be deemed to have been taken effect from 8.11.1967 as this order is only an extension of the orders issued in G.O. Ms.No.1035 dated 8.11.1967 which is a general order relating to payment of terminal benefits in respect of Government servants permanently absorbed in Public Sector undertaking; that the Finance Department by its letter dated 25.3.1989 has also clarified that the employees of Tamil Nadu Government including the employees of the State Government Undertakings and local bodies absorbed in the N.L.C. are eligible for pension from the date following the date of absorption in the N.L.C.; that according to the above clarification, the petitioner was absorbed in the N.L.C. on 1.5.1966 and as such, he is eligible for pension from 2.5.1966.

4. The further averments of the writ petition are that the Government in letter dated 16.8.1993 have further clarified that in respect of cases where the qualifying service rendered under the Tamil Nadu Government, State Government Undertakings and Local Bodies was 30 years and above, the pensionary benefits will be disbursed from the date of absorption; that his pensionable service starts from 29.4.1947 and he retired from the services of the N.L.C. on 31.7.1984 and hence he had put in 37 years 3 months and 2 days and accordingly, he is eligible for pension from the date following the date of absorption i.e. from 2.5.1966; that in this regard, he represented the matter to the Examiner of Local Funds & Accounts in his letter dated 26.3.1991 requesting to grant pension from the date of absorption as has been done in the case of similar employees of the Government, State Government Undertakings and Local Bodies; that the Examiner, in his reply dated 2 8.5.1991, has replied that the Government have considered all the points raised by him and issued orders sanctioning pension from the date of retirement i.e. from 1.6.1984; that the orders of the Examiner of Local Funds & Accounts sanctioning pension from the date of retirement i.e. from 1.8.1984, instead of the date of absorption i.e. on 1.5 .1966 are against the orders and clarifications issued by the Finance Department, which is discriminatory and not sustainable in law.

5. The petitioner would further submit that he had been representing since 1991 regarding the grant of pension from the date of absorption, but

there was no response; that the Accountant-General, Madras, was sanctioning pension from the date of absorption in the N.L.C., in respect of State Government deputationists absorbed in the N.L.C. and not from the date of retirement in the N.L.C.; that he also furnished three such pension orders in respect of S.Amirthalingam, M.N. Abdul Majeed and Mahalingam respectively; that the above records would show that the order of Municipal Administration and Water Supply Department in G.O.Ms.No.85 dated 19.3.1991 sanctioning pension from the date of retirement in the N.L.C., is arbitrary, discriminatory and are against the orders and the clarification issued by the Finance Department and is also in violation of Article 14 of the Constitution of India; that the reason for sanctioning pension from the date of retirement from the N.L.C. seems to be based on the suggestion of the Accountant-General in his letter dated 16.3.1994 to the effect that the cases settled already would not be re-opened.

6. The further case of the petitioner is that in the case of a municipal employee, viz., S.Masilamani of Mayiladuthurai Municipality, who was also deputed to N.L.C., pension was sanctioned from 1.4.1988 in G.O.Ms.No.243 dated 10.11.1993 subsequent to the date of sanction of pension to him from the date of actual retirement in N.L.C.; that subsequently, orders were revised in G.O.Ms.No.2 (2D) No.46 dated 10.5.1985 sanctioning pension from the date of absorption; that the M.A. & W.S. Department have not followed uniform procedure in sanctioning pension to their employees; that the procedure followed in his case and in the case of Masilamani, who is also similarly placed like him is discriminatory, unjust and not sustainable in law; that he would also submit that there is no pension scheme available in the N.L.C. and had he continued in his parent department, he would have been sanctioned full pension on superannuation and that on such grounds, the petitioner would pray to allow the writ petition.

7. No counter has been filed on the part of the respondent. However, the learned government advocate on the writ side would argue the matter on instructions. On the part of the learned counsel for the petitioner and the respondent as well, they would only reiterate what had already been traced in the pleadings by the petitioner and certain points against these pleadings by the respondent's counsel with no new facts or circumstances having been brought forth, nor any law pleaded, excepting on the part of the petitioner to cite a judgment of the Division Bench of this Court delivered in All India Ex-Serviceman Bank Employees' Federation, Tamil Nadu VS. Union of India reported in 1998 (I) MLJ 264 wherein it has been held that 'pension is a welfare measure and rules are framed as per merit of the situation and hence the differentiation in grant of one time increase in pension based on reasonable classifications... is constitutional and legally valid... and do not in any manner violate Article 14 of the Constitution of India.'

8. In consideration of the facts and circumstances pleaded by parties, having regard to the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the petitioner was appointed as a Lower Divisional Clerk in Mannargudi Municipality on 11.4.1945 and on 1.5.1966 he was absorbed as an N.L.C. employee and on 31.7.1984 he retired from the service on attaining the age of superannuation; that as per

G.O.Ms.No.40 dated 20.1.1989, the terminal benefits in respect of government servants permanently absorbed in public undertakings were liberalised allowing proportionate pension and death-cum retirement gratuity based on the length of qualifying service under government till the date of absorption and these orders have been given effect to those absorbed on or after 8.11.1967; that further on representation by the Government Employees Association absorbed in N.L.C. Limited, they have alleged that non-grant of the benefit of the pro-rata pension for the length of qualifying service under government for those who were absorbed in the Corporation prior to 8.11.1967 is an injustice and they are also eligible for the minimum pension based on meagre scales of pay and requested for the grant of proportionate pension for the service rende red by them in the state service.

9. The Government, on a careful examination of their requests, decided to accept it on the grounds of equity and directed the G.O.Ms.No.1035 dated 8.11.1967 be extended to the government employees including the State Government undertakings and local bodies who have been permanently absorbed in the N.L.C. prior to 8.11.1967 subject to the refund of the provident fund amount including the interest already drawn by them.

10. Citing a letter dated 16.8.1993 by Government of Tamil Nadu, Finance Department, the learned counsel would point out that only in the case of the petitioner, they have denied the benefit of the Government order: that as per the revised instructions issued in Government letter No.7948/Finance/(Pension)/94-1 dated 18.3.1994 on the advice of the Accountant General, the cases already settled shall not be re-opened and hence his request for sanction of revised pension cannot be complied with. Learned counsel would point out that once it is increased, they cannot deny only in the case of the petitioner just for the simple reason that he entered late.

11. Referring to the relevant provision of the Pension Rules, 1871 , para. No.4 of the said Rules deals with the government servants' transfer from services and posts to which these rules do not apply. Learned counsel would exhort that the petitioner is entitled to the arrears of pension from the date of his absorption that was from 2.5.196 6 to 31.7.1984.

12. On the part of the learned government advocate, he would only point out that as per G.O.Ms.No.40 dated 20.1.1989l, only those who have been permanently absorbed in N.L.C. prior to 8.11.1967 be extended with the benefit of the G.O. subject to the refund of provident fund already drawn. For this argument, the learned counsel for the petitioner would answer that only after refunding the amount drawn, the petitioner has come forward to claim the benefit of the Government Order.

13. In the above scenario, the question that is to be answered by this Court is, whether the direction that is sought for by the petitioner to issue revised orders counting the period of his pensionable service rendered from 29.4.1947 in the Mannargudi Municipality till the date of his retirement from the N.L.C. on 31.7.1984, is justifiable and could be ordered accordingly?

14. The petitioner pointing out that in other cases of similarly placed persons, the benefit has been extended, whereas, only in his case, it has not been extended. He would also point out that the Accountant General sanctioning the pension from the date of absorption in the N.L.C. in respect of the State Government deputationists absorbed in the N.L.C. and not from the date of actual retirement in the N.L. C., and therefore, in the light of the G.Os. extracted above, especially as per G.O.Ms. No.1035 dated 08.11.1967, the Government have extended the proportionate pension benefits for the service rendered by the petitioner and others in the local bodies, who have been permanently absorbed in the N.L.C. But, a bar has been created to the case of the petitioner in advocating a cut off date that such facility has been made available to those who have been absorbed in the N.L.C. after 8.11.1967 and since the petitioner was absorbed on 1.5.1966, he would not become entitled to the benefit of the G.O.

15. The above embargo created to the case of such persons has been removed by the subsequent G.O. Ms.No.40 dated 20.1.1989, under which, the Government have issued orders extending the benefit of G.O. Ms. No.1035 dated 8.11.1967 to 'the employees o e State Government undertaking and Local Bodies, who have been permanently absorbed in the N.L.C. Limited prior to 8.11.1967 subject to the refund of the provident fund amount including the interest already drawn by them'. Accordingly, the petitioner becomes eligible to the benefit of the pension Scheme pronounced by the Government in G.O. Ms. No.1035 dated 8.11.1 967, especially in view of the fact that the petitioner had refunded the P.F. amount including the interest already drawn by him in time.

16. In the above circumstances, there is absolutely no reason on the part of the authorities concerned, particularly the respondent herein, to deny the pensionary benefits as sought for by the petitioner. Moreover, the denial of the due that has been extended to the similarly placed persons to the petitioner is nothing short of selective discrimination, and therefore, it is only desirable to allow the above writ petition as prayed for by the petitioner.

In result, the above writ petition succeeds and the same is allowed. The respondent Government are directed to sanction pension to the petitioner by issuing revised orders from the date of absorption in the Neyveli Lignite Corporation Limited i.e. from 2.5.1966, instead of the date of superannuation i.e. from 1.8.1984 with claim of arrears, within a period of six weeks from the date of receipt of a copy of this order.

However, in the circumstances of the case, there shall be no order as to costs.

Index:Yes
Internet:Yes 30.08.2002
gs.

To

The Secretary to the Government
of Tamil Nadu,
Municipal Administration &
Water Supply Department,
Fort St. George, Chennai.